Postal Regulatory Commission
Submitted 8/17/2015 2:52:11 PM
Filing ID: 93156
Accepted 8/17/2015

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Notice of Market-Dominant Price Adjustment — Docket No. R2013-10R

PUBLIC REPRESENTATIVE COMMENTS

(August 17, 2015)

Pursuant to orders issued July 15, 2015 and July 28, 2015, the Public Representative hereby responds to the Commission's request for comments on the standard to be applied and the factors to be considered by the Commission in determining whether a Postal Service change in mail preparation requirements is a rate change with price cap implications.[1]

Since the introduction and implementation of the PAEA, mail preparation requirement changes have posed a significant challenge. The postal community has yet to find a solution for reviewing a mail preparation change that balances operational flexibility for the Postal Service and protection from burdensome price increases for the mailers. Over the past 9 years, the Commission has generally deferred to the Postal Service to identify and analyze what mail preparation requirement changes have price cap implications. It is important to remember that the Postal Service constantly changes mail preparation requirements, but has never brought a price change docket to the Commission solely due to such a change. As the Postal Service aggressively changes its requirements to best reflect modern financial and operational reality, oversight of this area has increased in importance.

In the past few years, the Postal Service has implemented aggressive new mail preparation requirements, such as requiring basic IMb for automation discounts and

[1] Order Establishing Procedures on Remand and Requesting Public Comment, July 15, 2015 (Order 2586); Order Granting Extension of Time to File Comments, July 28, 2015 (Order No. 2621).

labeling list changes to reflect carrier route restructuring and mail processing consolidations. These Comments contend that the Commission should implement a structured process to require the Postal Service to identify and report in its ACR required changes to mail preparations and for the Commission to review their revenue impact as part of the ACD. These Comments also detail that the appropriate standard for assessing if a mail preparation requirement change is a rate change is the size of the revenue impact.

These Comments also accept the Commission's previous invitation to interested persons to submit comments on "how the Commission … might use its backward-weighted index to better capture the effects on mail volumes of new mail preparation requirements." Order No. 1890 at 25 n. 45. The proposed methodology would permit the Postal Service to continue to estimate historical usage using the best available data. When estimating the revenue impact of a mail preparation change, the Postal Service could, at its option, depart from the Commission's rules requiring historical volumes except for known changes if the currently available data is not accurate. Upon receiving a report of each change by the Postal Service in the ACR, the Commission would compare the revenue impact using the volumes the Postal Service estimated at the time of the mail preparation requirement change with the actual volumes. Actual information should be used for the comparison to ensure that the pre-implementation estimates from the Postal Service reflect reality. Any difference in revenue, and thus use of price cap authority, would be applied to adjust the future available price cap limitation.

The four factors and sub-factors suggested by the Commission in the order initiating this proceeding would, in general, overly complicate the process of measuring revenue impact. Their application could be so varied that no objective standard could be discerned. Several sub-factors appear to be irrelevant to the process and the lack of sufficient data hinders reliance on other factors. Only migrating volumes due to the introduction, deletion or redefinition of a rate cell(s) have direct impact on revenue and those factors are only inputs into a study of the revenue impact of a mail preparation change. A more simplified version of this test is to treat all changes as having a potential impact, and measure the revenue impact for changes during the ACD as evidence is available.

Finally, these Comments respond to the court's suggestion that the Commission might revisit its decisions in Order No. 1890 on the IMb and FSS Bundling changes in light of its new standard. The Public Representative believes the IMb decision must stand, but FSS Bundling decision should be revised as discussed below, providing the Postal Service with additional price cap authority for the Periodicals class of 0.236 percent.

I. INTRODUCTION

Background. On April 18, 2013, the Postal Service revised its Domestic Mail Manual to modify the eligibility requirements for mailers to qualify for automation First-Class, Standard, Periodicals, and Package Services rates. 78 Fed. Reg. 23137 (April 18, 2013). The modification was scheduled to become effective January 26, 2014. It no longer permitted mailers using Basic IMb to qualify for automation rates. *Id.* In effect, mailers were to be required to utilize Full Service IMb or incur a penalty. The Postal Service did not make a rate change filing to reflect the impact on its rates resulting from the DMM changes.

On September 26, 2013, the Postal Service filed notice of a planned price adjustment for market dominant products.[2] The Notice failed to account properly for the planned implementation of the Full Service IMb requirements. It did not make reasonable adjustments to its billing determinants for the former Basic IMb mailers to account for the effects of the mailing requirements change in its price cap calculation.

[2] United States Postal Service Notice of Market-Dominant Price Adjustment, September 26, 2013 (Notice).

In Order No. 1890, the Commission determined that the Postal Service failed to utilize historical volumes for its billing determinants[3] to account reasonably, as it is required to do by the Commission's rules, 39 C.F.R. § 3010.23(d), for the deletion and/or redefinition of rate cells for First-Class Mail, Standard Mail, and Periodicals.[4] By failing to make an appropriate adjustment, the proposed Postal Service rates exceeded the price cap for First-Class, Periodicals and Standard Mail classes.[5] The impact was significant.

The mail preparation modification required mailers to alter a basic characteristic of their mailing (to switch from Basic IMb to Full Service IMb) in order for a mailing to qualify for the same rate category (automation rates) for which they were eligible before the change in mailing requirements. The Commission ruled that the new mailing requirements "constitute a classification change with rate implications pursuant to 39 U.S.C. § 3622(d)(1)(A) and 39 C.F.R. § 3010.23(d)." Order No. 1890 at 2. Consequently, the Postal Service chose to defer implementation of the modified requirements and filed an appeal of the Commission order.[6]

On May 12, 2015, the court denied in part and granted in part a Postal Service petition for review of Order No. 1890 which denied the Postal Service's implementation of the Full Service IMb requirements for failure to comply with 39 U.S.C. § 3622(d).[7] The court first affirmed the Commission's authority to determine when mail preparation changes affect the application of the price cap. Specifically, the court found that [t]he statute prevents the Postal Service from evading the price cap by shifting mailpieces to

[3] Order on Price Adjustments for Market Dominant Products and Related Mail Classification Changes, November 21, 2013 (Order No. 1890) at 23-24, see also Order No. 547 at 12.

[4] The Postal Service made appropriate adjustments to its Package Services class of mail. Order No. 1890 at 14.

[5] *Id*. at 5. The Postal Service adjusted the billing determinants to account for the effects of the Full Service IMb requirements on the price cap calculation for Package Services.

[6] Response of the United States Postal Service to Order No. 1890, November 29, 2013.

[7] *United States Postal Service v. Postal Regulatory Commission*, 785 F.3d 740, 744 (D.C. Cir. 2015).

higher rates through manipulation of its mail preparation requirements. 785 F.3d at 751. The court further concluded that the Commission's exercise of its authority in Order No. 1890 was arbitrary and capricious for failing to "articulate a comprehensible standard for the circumstances in which a change to mail preparation requirements will be considered a "change in rates." *Id.* at 753. Accordingly, the court remanded the case to the Commission to "enunciate an intelligible standard and then reconsider its decision in light of that standard." *Id.* at 756. On July 8, 2015, the court issued its mandate remanding the case to the Commission.

On July 15, 2015, Commission Order No. 2586 established procedures on remand and solicited comments from interested persons on the standard to be applied by the Commission when considering whether mail preparation changes are changes in rates with respect to 39 U.S.C. § 3622(d). Order No. 2586 lists four factors with various subparts the Commission plans to evaluate in analyzing whether a mail preparation change constitutes a rate change. Order No. 2586 at 3-5. The order requests comments on the adequacy of the factors. While the order does not request comments on the potential use of forward looking indices rather than backward looking historical volumes to measure rate change, the Commission has previously invited comments on the issue. Order No. 1890 at 25 n. 45.[8]

A. COMMISSION APPROACH IN ORDER NO. 1890

It is useful to review the Commission's attempt to apply a workable standard in Order No. 1890 which appeared reasonable but which the court found insufficient due to the apparent inconsistency with the Commission treatment in Order No. 1890 of another mail preparation change involving bundling.

---

[8] Order No.1890 also recognized that a "broader inquiry" of what constitutes a redefinition of rate cells might be useful to establish a rule of general applicability, *i.e*. standards, and noted interested persons could request a rulemaking if they wished, and invited comments on improving the backward-weighted index with a forward-weighted index. The Order explained that, in the instant case, such an inquiry was neither necessary nor possible within the 45-day period prescribed for review of rate changes as the issue is relatively straightforward. Order No. 1890 at 18 n. 30; 25 at n. 45.

Order No. 1890 ruled that a mailing requirement change constitutes a rate change if it introduces, deletes or redefines rate cells that "require mailers to alter a basic characteristic of a mailing in order for the mailing to qualify for the same rate category…." Order No. 1990 at 18. The Commission went on to clarify that it does not consider "frequent changes the Postal Service makes to its carrier routes to be covered by 39 C.F.R. part 3010" (market dominant rate adjustments), *i.e*. they do not alter the basic characteristics of a mailing. The standard the Commission appeared to apply in order to signify a rate change is: whether mailers are required to alter a "basic characteristic of a mailing" to qualify for the same rate category. It reiterated it will not indiscriminately treat all new mail preparation requirements as rate adjustments. Order No. 1890 at 25. The Order did not explain what characteristics of mailing are basic and how they are differentiated for purposes of determining a change in rates.

As part of Docket No. R2013-10, the Postal Service also implemented new bundling requirements for FSS zone flats. In Order No. 1890 the Commission determined that the FSS zone bundling requirements did not constitute a mail preparation requirement change that implicated the price cap because they did not "change a basic characteristic of a mailing." Order No. 1890 at 71. The court stated that the analysis of FSS bundling requirements in Order No. 1890 was inconsistent. The court noted the bundling requirement like the IMb mail preparation change compelled mailers to change their mailing practices. Thus, the Commission appeared to apply inconsistent standards for determining whether a change in mail preparation requirements is a rate change. The court said it could not understand why the size of the change determines the "type" of change because it seems a small change that affects a "change in rates" is a change. The court noted Order No. 1890 did not distinguish the two situations and did not provide sufficient support for the Commission's argument on brief to the court that the bundling change was "trivial."

B. RATEMAKING PRINCIPLES

The Postal Service may not adjust rates in excess of those within the authorized revenue limitations of the PAEA. Each rate schedule states the nature and availability of the service and the class of customers to which it applies as well as the specific rates in dollars and cents. This said; ratemaking is not an exact science. Mailers do not mail the exact volumes used in determining rates for the future. The mail mix changes, however slightly, throughout the year even without changes in mail preparation requirements. Postal Service revenues will not and cannot be expected to match precisely the allowed price cap level. Between rate adjustments, the revenue fluctuates as the volumes assumed to establish rates vary as a result of mailer decisions. However, if volume fluctuates due to Postal Service operational rules that affect the revenue received, however slight, a rate change occurs. Because the PAEA requires adherence to the price cap, the key consideration is whether Postal Service revenue changes and by what amount. The Postal Service may not game the system through subtle or not so subtle mail preparation requirements that force mailers into paying more for service so that Postal Service revenue increases. Of particular concern is a revenue stream that increases revenue above the annual limitation of the price cap.

This case dealing with IMb service revisions is relatively simple. The impact using historical volumes required by the Commission‘s policy significantly overstepped the proposed rates. The court is not so concerned with this specific case, but with the likely standard, or lack of standard, the Commission will apply when deciding whether a rate change must be filed and whether the revenue impact is essentially *de minimis* as was the case, though unproven by the Commission, with the bundling changes.[9] This is the difficulty of the current case. Historically, the Commission has provided significant

[9] It is not clear whether the bundling requirement was considered by the Commission to be *de minimis* because the revenue impact was minor if it is assumed all affected mailer volumes moved to the alternative rates cells, as was assumed for the Basic IMb mailers, or if the revenue impact was minor because most affected mail volumes would remain where they were with little or no change in revenue, thus implicitly forecasting the impact contrary to the Commission’s ruling on the IMb change and, in the absence of known adjustments, contrary to Commission rules.

deference to the Postal Service to implement mail preparation requirement changes. Due to the clear direction of the Court, the Commission must now develop a standardized process for determining whether requirement changes implicate the price cap. To be fair, clear, and comprehensive, the Commission must evaluate all mail preparation requirement changes against an evidence-based standard.

II. DISCUSSION

A. Changing Mail Preparation Requirements

Postal Service changes in mailing requirements occur through changes in the terms of service described in the Mail Classification Schedule (MCS) or, as in this case, the Domestic Mail Manual (DMM). Changes to the MCS require a Postal Service filing and Commission approval to change classification language in the MCS pursuant to 39 C.F.R. § 3020. Mailing requirements in the DMM can be altered by the Postal Service without filing for a classification change. Order No. 1890 at 27. Nevertheless, as this case and the court’s decision makes clear, the lack of classification change does not necessarily indicate the preparation change will have no impact on the availability of a rate cell or the terms of service applicable to a given rate cell and, consequently, an impact on mail volume utilizing that rate cell. In either of these cases, the question arises whether an impact on the rate cell amounts to the deletion or redefinition of rate cell that has an impact on revenue or on the price cap calculation, thus requiring a rate change filing under the Commission’s rules.

It must be acknowledged that virtually any change in either mailing requirements or terms of service as described or required in the MCS or DMM will, no matter how insignificant, can potentially alter some mailer’s decision to use a particular rate cell and either shift to a different rate cell or eliminate the mailer’s volume altogether. In some measure, a mail preparation change will alter the volume of mail, no matter how insignificant, in individual rate cells in each affected rate category. Thus, any change in mailing requirements that introduces, deletes, or redefines a rate cell will alter, to some degree, the future volume of mail in certain rate cells. This will technically have rate implications in the next annual price cap calculation. If the rate change is effective prior to the effective date of next annual rate filing, it can also have immediate revenue impact not factored into the current annual price cap limitation. If a rate case is not being filed, there remains a potential for change in volumes in rate cells that would have immediate revenue implications causing the effective rates to exceed the current permissible annual price cap limitation as well as having future price cap implications. If this is likely to occur from the mailing requirement change, the Commission is obligated to protect the price cap from such events.

The Commission's enunciated test that a rate change occurs where there is a change in a basic characteristic of the mail is most useful as a proxy for the more critical question—does the mail preparation change force a mailer who does not change behavior to pay a different price for the same mailing?

There are two different temporal styles for mail preparation requirement changes. The current case involves both types. The FSS bundle changes are a change in mail preparation requirements filed with the Postal Service's Notice of Market-Dominant Price change. The Postal Service often changes mail preparation requirements to match changes in pricing structure that are part of market dominant price changes. The Commission is able to review the impact of these changes on the price cap during the market dominant price cap docket because it is aware of them, and they are implemented simultaneously with the broader price change. The second temporal type is a mail preparation requirement that is not timed to the price change of a market dominant product. The IMb requirement is an example of this, because the Postal Service did not notify the Commission of this change, and did not explicitly link the change to the broader change in prices.

B. Commission Should Require Notice of Mail Preparation Changes in ACR

When the mail preparation change occurs simultaneously with the market dominant price change, the Commission's process for determining if the change implicates the price cap can occur as part of the price cap docket. However, the Commission should also require the Postal Service to provide notice of all mail preparation changes that occurred throughout the year as part of the ACD process that are not timed to a price change filing. In its review of a Market Dominant price cap change, the Commission determines if the proposed prices are within the requirements of the price cap. During the ACD, the Commission determines if the prices in effect for the entire year were within the requirements of title 39, including the price cap. 39 U.S.C. § 3652(a)(1). As detailed further below, because of the Postal Service's constant changes to mail preparation requirements, effective prices to the mailers may vary throughout the fiscal year without price change notices. This has been especially true given the Postal Service's position that DMM changes do not implicate the price cap.

As explained below, the Public Representative proposes that the Commission should require the Postal Service to provide in its ACR a list of all mail preparation changes that introduce, delete or redefine rate cell(s) throughout the year under review. Most changes will have a *de minimis* impact on the price cap, and the Postal Service would be able to state that point. If the change is *de minimis*, under current rules, the Postal Service is obligated to file a notice under the *de minimis* rules in section 3010.30. The Public Representative proposes the lower end of the *de minimis* rule include a cut-off revenue change level below which even a rate notice under that rule is not required. But, as part of the ACD the Commission would also evaluate the impact of any change in mail preparation requirements that amounted to price changes. The Commission should use the leverage of the ACD process to fully protect the price cap from any and all mail preparation requirement workarounds.

C. Impact on Revenues

To measure the impact of mail preparation changes, the Commission requires as a starting point the use of historical data to measure revenue impact, but that is tempered with the requirement that adjustments to the historical volumes must be made where other volumes are known. 39 C.F.R. § 3010.23(d)(3). The Commission rules thus utilize the best known information available to determine revenue impact. If a rate cell is inserted, deleted, or redefined, volumes should be attributed to the alternative cell that mailers will use if they do not change their mailing behavior. In many cases historical volumes should be attributed to the alternative rate cells.

The Commission's policy as stated in Order No. 1890 is straightforward. If a mail preparation change affects important characteristics (called "basic characteristics of the mail" in Order 1890, such as volume or density requirements) likely having a "significant impact on revenues" generated by the impacted rate cells, the Postal Service must file a notice of rate change. Changes in other characteristics can have an impact on revenues. If there is an impact on revenue, the annual limitation is implicated. As the court stated, a small rate change is a rate change.

But a rate change does not necessarily need to be burdensome. The Commission recently added a new rule on July 14, 2014 providing for limited procedures for *de minimis* rate increases. 39 C.F.R. § 3010.30.[10] The rule defines *de minimis* as a "percentage change in rates for the class equaling or exceeding 0.001 percent." 39 C.F.R. § 3010.30(a). Under that rule, the Postal Service is to file workpapers with each notice of *de minimis* rate increase that demonstrate the sum of all *de minimis* rate increases since the most recent Type-1-A, Type 1-B, or Type 3 notice of rate adjustment, that was not *de minimis,* does not result in a percentage change in rate

[10] RM2014-3, Order Adopting Final Rules on the Treatment of Rate Incentive and De Minimis Rate Increases for Price Cap Purposes, June 3, 2014 (Order No. 2086).

for the class equaling or exceeding 0.001 percent. A full-blown rate adjustment filing is not required. 39 C.F.R. § 3010.30(e).

This new rule recognizes the minimal impact that small changes in rates may have on revenues for a class. It prescribes a limited rate filing for very small incremental changes in revenues. There is no record in this proceeding about the revenue impact of all mail preparation changes that insert, delete or redefine rate cells. Consequently, the number of *de minimis* rate change notice filings as a result of mail preparation changes that should be filed is not in this record. The *de minimis* rule itself contemplates a notice for a Type-!-A, Type 1-B or Type 3 rate change.

The current case involves a revenue change much larger than the *de minimis* level. However, the court is concerned that the Commission did not appear to apply a precise standard differentiating the IMb requirements and the bundling requirements changes. Because it was nowhere found in the Commission's opinion, the court rejected the argument that the bundling requirement change was a trivial preparation change and therefore differentiated from the IMb requirement change. While the court cited to the new rules in part 3010 effective July 14, 2014, it did not discuss the Commission's *de minimis* rules implemented at the same time in the same order. Order No. 1890 could not have cited to the de minimis rules because the rule did not become effective until July 14, 2014, almost eight months after Order No. 1890 was issued on November 21, 2013.

D. Revision of *De Minimis* Rule for Administrative Efficiency

The record does not contain the size of revenue changes that are likely to result from certain operational changes. If it is desirable to limit the number of rate change filings, the *de minimis* level could be increased. When establishing the de minimis level of 0.001 percent, the Commission rejected requests to raise the level to 0.005 percent, noting the Bureau of Labor Statistics (BLS) reports the CPI-U index to three digits and that "it is reasonable to conclude that Congress did not intend to limit the Postal

Service's ability to make rate increases of less than 0.001 percent. Order No. 2086 at 33. However, the rule could easily be adjusted to three digits such as 0.005 percent and remain consistent with the BLS practice. The three digit rationale does not constrain the Commission to a *de minimis* level at or below 0.001 percent.

More significantly, the current *de minimis* rule does not provide for a minimum change in revenue below which a notice of rate change is not required. According to the rule, the Postal Service must file rate changes whenever there is a change in revenue, however small. If the revenue impact is less than the *de minimis* threshold of 0.001 percent, a limited rate filing is nevertheless required.

Changes in revenue can occur whenever there is an insertion, deletion or redefinition of a rate cell and historical volumes for the affected cells can be imputed to alternative rate cells. If this would result in a revenue change, then a rate change notice under the rules is required. The Commission should consider increasing the *de minimis* ceiling to at least 0.005 percent and insert a minimum revenue change below which no rate change filing is required, such as 0.001 percent. By revising the *de minimis* rule to increase the maximum *de minimis* amount and adding a lower bound of revenue where a rate change does not need to be filed, the Commission can establish a workable standard proposed by the Public Representative for filing rate changes requested by the court.

The Postal Service is obligated to apply a further test. That is, adjust for the known changes in volumes (i.e. without estimation and forecasting) that will occur as a result of the change and also apply that knowledge to test revenue impact. Application of the two tests may result in either revenue increases or decreases. In either case, where the Postal Service is not required to file a rate case, the Commission should nevertheless require the Postal Service to report in its ACR the results of its revenue impact study to the Commission. The Commission can monitor these reports to determine if the cumulative impact of these changes is undermining the Postal Service's compliance with the annual limitation. Compliance filings are required once each year.

The Postal Service may not evade the price cap by actions that increase its revenue during the year that exceed the authorized annual limitation, as adjusted for the annual limitation increase during the period since the last rate case.

Because adjustments to market dominant rates are filed annually, the impact of de minimis revenue changes due to mail preparation changes during the period the change becomes effective until the next rate adjustment will be limited. Mail preparation changes that occur early in the current year will be reflected in volumes included in the next annual rate adjustment case. Those changes occurring later in the year may not yet be able to fully reflect their full annual impact on volumes, but the Postal Service shall make adjustments for known changes.

In conclusion, under current rules, whenever the Postal Service changes mail preparation requirements having the effect of instituting, deleting or redefining rate cells, it must determine the level of revenue change and at least file a *de minimis* rate change if the impact on revenues for that change or for an accumulation of changes since the last rate adjustment is less than 0.001 percent. Otherwise, it must file a full rate adjustment.

The Commission should review and revise rule 3010.30 to increase the *de minimis* maximum to at least 0.005 percent and add a minimum threshold below which a rate change filing is not required, such as 0.001 percent because this is the smallest number in the CPI-U index. Establishing a standard below which no rate review is required immediately does not ignore the statutory requirement for Commission review of rate changes. The responsibility would be maintained by reviewing reports in the ACR of Postal Service volume estimates that are subject to adjustment through revision of the price cap limitation.

E. How a Backward-Weighted Index Subject to Price Cap Adjustment Can Better Reflect the Impact of Unknown Volume Changes

One of the most significant issues with mail preparation requirement changes is that historical information regarding the impact of the change is often unavailable or judgmental. Historical examples include IMb Full Service discounts and FSS zone volume. The Commission uses a backward-weighted index. When making adjustments to the index, the Commission attempts to adhere to the principle that historical information should be used with an adjustment for known data wherever possible. But there are numerous examples of potential changes where historical information is not available or meaningful. In all cases where the Postal Service implements a mail preparation requirement change concurrent with a market dominant price change, the Commission should attempt to evaluate the impact of the proposed change at the time of implementation, even if historical information is not available to capture the impact of the change. However, as part of a two part review process, the Commission should use after-the-fact information reported in the ACR to ensure that the initial assumptions were correct. The ACD process should include an evaluation of the accuracy of those adjustments and the ability to adjust future price cap limitation for inaccuracies in the initial volume estimates.

If the Commission implements the Public Representative's proposal to require the Postal Service to file notice of all mail preparation changes together with a revenue impact analysis of each change listed in the ACR, and to thereafter evaluate all mail preparation requirement changes as part of the ACD, the backward-weighted index used for price cap calculations will pose a technical issue. However, this issue has a direct solution. The Public Representative continues to support the use of a backward-weighted index for market-dominant price changes.

The process for adjusting the billing determinants for price changes due to mail preparation requirements inherently augments the historical information used for the price cap calculation. When there is no historical information available, the Postal

Service has to make informed estimates of what the historical volume would have been. One advantage to an after-the-fact review of mail preparation requirement changes is that the impact of the change can be seen. As part of the ACD, the Postal Service would be required to detail how volumes shifted due to preparation requirement changes. It is likely that most changes do not have an impact of volume. However, the clear benefit of adding the process is that it permits the Commission to adjust the price cap for the Postal Service's optional volume estimates that diverged from actual volume and provides stakeholders an avenue to present alternative and additional information regarding rule changes that have historically not been presented to the Commission.

The most recent price cap calculation workpapers should be used, and only the actual data revealing the impact of price changes due to mail preparation requirement changes should be used to update the calculation with more accurate information. The impact of the price change after the fact using actual volumes should be compared to the *a priori* estimate of such changes. The difference for each Class would be subtracted from the available price cap limitation. With this method, the Commission would ensure the fidelity of the price cap.

In Docket No. R2009-2, the Postal Service added a discount for Full Service IMb in First-Class, Standard, and Periodicals. No information was available regarding the historical volume that would have been mailed at discounted prices, so the Postal Service developed estimates for what mailers would have done. The Postal Service estimated that over 23 billion pieces of Standard Mail would have been mailed at the Full Service discounted price. This created $23 million of price cap authority for Standard Mail in the Docket No. R2009-2 prices.[11] Standard Mailers entered 13 billion pieces of mail that qualified for the Full Service discount in FY 2010, roughly half the amount projected by the Postal Service.[12] Under the standard proposed by the Public

[11] See Docket No. R2009-2 file "CAPCALC-STD-FY2009" tabs "LPF IM Adjustment" and "HD-Sat-CR-IM Adjustment"

[12] See FY 2010 Standard Mail Billing Determinants, USPS-LR-FY2010-4.

Representative, the Commission could have revisited the Postal Service's volume assumption used in the Docket No. R2009-2 Standard Mail workpapers and updated the analysis with actual numbers. The Postal Service's price cap authority was increased by $10 million due to the inaccurate estimates, and the Commission could have recaptured that amount during the FY 2010 ACD.

F. Factors the Commission Proposes to Consider When Determining Whether a Mail Preparation Change Constitutes a Rate Change

Order No. 1890 suggested four factors for consideration to determine a rate change in lieu of measuring revenue changes. Many of the factors mentioned in Order No. 2586 are not relevant to an inquiry about the level of revenue impact. A standard relying upon subjective consideration of changes in the basic characteristics of a mailing not only is difficult to administer but ignores the essential nature of the critical question – whether the revenue of the Postal Service is changed in excess of a reasonable *de minimis* amount.

1. Basic Characteristics of a Mailing

Several changes in the basic characteristics of mailings are listed. But the mere presence of factors that modify mail preparation requirements like the size, weight, or content of eligible mail changes, or changes in the presentation and/or preparation of mail, alone, without measurement of the revenue impact will not provide a sufficient standard.

Other basic characteristics of mailing listed by the Commission for consideration are not immediately relevant to the impact on revenue. They are the regularity, magnitude or complexity of mail preparation changes. However, the revenue impact should be recalculated for each periodic change to determine the magnitude of the change that impacts the amount of revenue. The complexity of a change may make the

Postal Service's analysis of the revenue impact more difficult, but the need for an analysis of revenue impact remains unchanged.

2. Effect of the Change on Mailers

The Commission suggests considering the effects of the change on mailers--whether the mail preparation requirement change imposes fixed or variable costs on mailers. This factor does not appear to be a useful consideration for these purposes. The effects on mailer costs may only indirectly affect mailer volumes, and, in any case, the Postal Service would not have detailed information on whether and the extent costs of mailers, if any, might be affected. While the Postal Service has data on the weight or shape of mail, it would not have data on its mailers costs and could not surmise which of the available alternative rate cells would be utilized by mailers seeking to avoid certain additional costs. Nor would it be possible to determine whether such affected mailers would choose to move up or down one, two or more rate categories to avoid additional fixed or variable mailer costs.

The Commission suggests considering the effect on high volume and low volume mailers. The total impact on mailers, whether high or low volume does not need to be considered. However, the Postal Service may short-cut its revenue impact tests by first focusing on the impact of a change on its high volume mailers to determine if, alone, their move to an alternative rate cell(s) would likely cause the revenues to change more than a *de minimis* amount.

Similarly, the number of mailers affected, the benefits to the mailers, and the timeframe for mailers to comply with the change, are not directly relevant to a decision whether the change in mail preparation requirements is a rate change. These are factors that probably would affect total mailers' volume response to a mail preparation change that could influence the known volume changes in the future, but other than the effective date of a mail preparation change, the proposed sub-factors are not relevant to determining the volume of mail migrating to alternative rate cells for purposes of calculating the impact on the Postal Service revenue using historical volumes.

The volume of mail affected can influence the revenue impact resulting from a mail preparation change. Volume is relevant because the volumes affected will factor directly into the historical volumes that, with no change in mailer behavior, would be forced to an alternative rate cell.

3. Purpose of the Classification Change

The Commission also suggests factors related to the “Purpose of the Classification Change” such as whether the change improves the collection, transportation, and/or delivery of the mail, or aligns with changes in the Postal Service’s network and/or equipment, and is intended to increase a price. The Commission has previously rejected looking to the subjective intent of the Postal Service in changing mail preparation requirements as a basis for what constitutes a rate change. Order No.1890 at 26-27.

The first two considerations of this factor do not assist in determining the revenue impact. Each consideration may influence the volume of mailing requirements change, but the Postal Service is unlikely to have sufficient data about its mail volumes to know whether changes designed to improve operations would specifically indicate where historical volumes would migrate to upon implementation of the particular mail preparation changes. What is relevant from a mail preparation change, regardless of purpose, is the direct impact on revenue from the migrating historical volumes to an alternative rate cell.

If the intended purpose of the modification is to increase the price paid by mailers, the purpose is not necessarily relevant. Most important is the actual impact on revenue. If the revenue increase exceeds a minimum level to be determined, a rate change filing should be required.

4. Is there a Shift in Volume of Mail from One Rate Category to Another?

Whether there is a shift in volume of mail from one rate category to another is the key consideration. If the mail is shifted from one rate cell to another, volumes in individual rate cell changes likely will have revenue consequences. The second factor suggested-- does the change result in the *de facto* elimination of a rate category or the deletion of a rate cell-- is a fundamental consideration when asking whether a rate change filing is required. As the Commission found earlier in this proceeding, the proposed *de facto* elimination of the automation rate for Basic IMb is the deletion of a rate cells or, at the very least, a redefinition of rate cells. Whether the change in mail preparation requirements causes a shift in volume of mail from one category to another is critical.

G. Application of the Proposed Standard for Determining a Rate Change to the IMb and the FSS Bundling Mail Preparation Changes.

The court suggests the Commission reconsider its IMb and FSS findings in light of the standard it adopts in this docket. As described above, the Public Representative supports a strict standard for review of mail preparations standards. Under any reasonable standard, the Commission’s original IMb finding should stand.

The Public Representative supports revisiting the FSS finding given recent Commission action and available information. In Docket No. R2013-10, the Postal Service noted that the FSS bundling requirements for Periodicals could constitute a price change. *See* Order No. 1890 at 71. However, the Postal Service did not provide any information that could be used to assess the price cap impact of this potential change. In the most recent market dominant price change, Docket No. R2015-4, the Commission calculated the impact of new FSS requirements. Specifically, the Commission and the Postal Service developed a method to calculate the price cap impact of FSS bundling requirements in the Periodicals class. The Public

Representative has re-calculated the Docket No. R2013-10 Periodicals price change using the FSS bundle method from Docket No, R2015-4 and actual FSS data from FY 2014. The FY 2014 data reflects the impact of the FSS bundle requirements propagated as part of Docket No. R2013-10.

The workbook provided with these Comments, "PR PER CAPCALC R13-10 FSS.xls" details the price reduction associated with the FSS bundle requirement changes in Periodicals. The Postal Service implemented a 1.664 percent price change for Periodicals, as calculated by the Commission. Order No. 1860 at 86. Accounting for the newly available FSS data, the same changes in prices is 1.460 percent, 0.204 percent less than originally calculated. As part of its determination in this docket, the Commission should increase the Postal Service's banked authority for Periodicals by 0.204 percent. The Commission should use the most accurate data available to calculate the change in prices from Postal Service market dominant price proposals, and this revised estimate is a more accurate depiction of the impact of the price changes and mail preparation requirements of Docket No. R2013-10.

CONCLUSION

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

Respectfully Submitted,

____
Kenneth E. Richardson
Public Representative

____
John P. Klingenberg
Public Representative Team for
Docket No. R2013-10R

901 New York Avenue, N.W.
Washington, D.C. 20268-0001
(202) 789-6859; Fax (202) 789-6891
richardsonke@prc.gov